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Message Text

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L/OES-MRS. WEST (DRAFT)
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L/T-MISS NILSEN (DRAFT)
---------- 055407
O R 032044Z JAN 75
FM SECSTATE WASHDC
TO AMEMBASSY BERLIN IMMEDIATE
INFO AMEMBASSY COPENHAGEN

C O N F I D E N T I A L STATE 001276

E.O. 11652: GDS

TAGS: EFIS, ICNAF, XN, US, GE, PLOS

SUBJECT: ICNAF REGULATIONS

REFS: (A) STATE 153340 (B) STATE 270354 (C) STATE 272852

BERLIN FOR FELIX BLOCH

SUMMARY: GDR NOTE PRESENTS COMMENTS AND RESERVATIONS WHICH ARE CONDITIONS UPON PROPOSALS 1974 ANNUAL ICNAF MEETING. THIS COULD UNDERMINE ENTIRE ICNAF PROGRAM AND OVERTURN ALL PROGRESS MADE AT RECENT ICNAF MTGS. COULD ALSO ACCELERATE ADOPTION OF 200 MILE LEGISLATION BY US CONGRESS. FORCEFUL EMBASSY ACTION REQUIRED.

1. UNDER ICNAF CONVENTION AS AMENDED, FISHERIES REGULATIONS CONFIDENTIAL

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TAKE EFFECT SEMI-AUTOMATICALLY AFTER SIX MONTHS FROM CIRCULATION BY DEPOSITARY GOVERNMENT (US) UNLESS AN ELIGIBLE MEMBER PRESENTS AN OBJECTION. IN THIS EVENT THERE IS COMPLICATED SERIES OF DELAYS AND OPPORTUNITIES FOR OTHER MEM-

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BERS TO OBJECT EVEN THOUGH SECOND MEMBER DOES NOT HAVE SUB-
STANTIVE OBJECTION. AFTER THAT, REGULATION EITHER TAKES
EFFECT FOR NON-OBJECTING MEMBERS OR IS NULLIFIED FOR ALL,
DEPENDING ON NUMBER OF OBJECTIONS. IN PRACTICAL EFFECT AN
OBJECTION BY ANY MEMBER HAVING ANY DEGREE OF MEANINGFUL

PARTICIPATION IN THE PARTICULAR FISHERY UNDER THE REGULA-
TION IN QUESTION WOULD PROBABLY RESULT IN NULLIFICATION IF
OTHER MEMBERS ALSO INVOLVED IN THAT PARTICULAR FISHERY.

2. GDR NOTE WAS BROUGHT IN NOV 13 ON SUBJECT OF REGULA-
TIONS PROPOSED AT JUNE 1974 ANNUAL MEETING AND CIRCULATED
BY DEPT CIRCULAR NOTE OF JULY 11, 1974. FOURTEEN PROPOSED
REGULATIONS AND TWO RESOLUTIONS WERE CIRCULATED. NOTE NO.
RV 192/74 ADDRESSED FROM MFA TO DEPT AND DATED BERLIN, 30
SEPTEMBER 1974. NO EXPLANATION OF DISCREPANCY BETWEEN
DATE NOTE AND DATE DELIVERED.

3. NOTE CONVEYS ACCEPTANCE OF TEN PROPOSALS AND SUPPORT
ONE RESOLUTION WITH COMMENT. IT ACCEPTS THREE PROPOSALS
WITH COMMENT, AND ONE WITH RESERVATION, AND OBJECTS TO ONE
RESOLUTION. CONVEYING OF ACCEPTANCE OF PROPOSALS NOT
NECESSARY UNDER CONVENTION AS AMENDED, AND RESOLUTIONS ARE
ADOPTED BY COMMISSION AS FINAL ACTION AND ARE NOT SUBJECT
TO SIX MONTH OBJECTION PROCEDURE.

4. WITH REGARD TO THE FOUR REGULATIONS AND TWO RESOLUTIONS
WHICH GDR HAS NOT UNCONDITIONALLY ACCEPTED:

A. PROPOSALS 4, 5, AND 6 DEAL WITH INCIDENTAL CATCH OF
REGULATED SPECIES IN SUBAREAS 3, 4, AND 5 IN DIRECTED
FISHERIES FOR OTHER SPECIES. GDR COMMENT IS QTE IN VIEW OF
THE LONG JOURNEYS OF THE GDR FLEET AD INSIGNIFICANT
EXCEEDING OF THE STIPULATED QUANTITIES OF SPECIES OF FISH
ON BOARD IS NOT CONSIDERED AN INFRINGEMENT UNQTE. US HAS
MADE QUITE CLEAR TO ALL CONCERNED THROUGH REF A AND AT
MIAMI MTG (REF B) THAT IN VIEW OF THE WIDESPREAD VIOLATIONS
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OF ICNAF REGULATIONS RANGING FROM MINOR TO VERY MAJOR IT
CONSIDERS STRICT ADHERENCE TO THE REGULATIONS TO BE A
CRITICAL ELEMENT. OTHERWISE THE ICNAF SYSTEM WILL COLLAPSE
WITH EITHER CONSEQUENT FURTHER DEPLETION OF THE RESOURCES
AND ECONOMIC DISRUPTION OF THE FISHERIES OR COASTAL NATION
ACTION TO REMEDY THE SITUATION. THE RECENT SENATE VOTE OF
68-27 ON THE 200 MILE LEGISLATION HAS A DIRECT BEARING
(REF C). THESE PROPOSALS WERE PARTIALLY OVERTAKEN BY NEW
PROPOSALS RELATED TO INCIDENTAL CATCHES IN SUBAREAS 4 AND 5
AT MIAMI MTG. GDR VOTED FOR PROPOSALS AT BOTH ANNUAL AND
MIAMI MTGS.

B. PROPOSAL 11 DEALS WITH BOTTOM TRAWLING RESTRICTIONS IN

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YELLOWTAIL FLOUNDER REGION OFF US COAST. GDR STATEMENT QTE THE GDR CONFIRMS THE ACCEPTANCE OF PROPOSAL 11 WITH REGARD TO THE NECESSARY UTILIZATION OF ITS CATCH QUOTA FOR POLLOCK WITH THE RESERVATION THAT THERE IS NOT YET A

SAFE TECHNICAL SOLUTION FOR AVOIDING INCIDENTAL CONTACT OF THE SEA BED BY PELAGIC NETS AND THUS FOR ABSOLUTELY AVOIDING INCIDENTAL CATCHES OF INDIVIDUAL BOTTOM SPECIES. UNQTE. AS NOTED IN REFS A AND B, PROTECTION OF THE YELLOW-TAIL FLOUNDER IS AN ABSOLUTELY ESSENTIAL ELEMENT IN US ICNAF POSITION. PROPOSAL EXPANDS A MORE LIMITED REGULA-TION ADOPTED AT SPECIAL MTG OCT 73 WHICH IS NOW IN EFFECT FOR ALL INCLUDING GDR. REGULATION REQUIRES USE OF QTE MIDWATER TRAWLS, USING MIDWATER TRAWL DOORS INCAPABLE OF BEING FISHED ON THE BOTTOM UNQTE AND PROHIBITS USE OF PRO-TECTIVE DEVICES. MIDWATER TRAWLS MAY TOUCH BOTTOM BRIEFLY AND INFREQUENTLY, BUT DOING SO FOR ANY PERIOD WITHOUT PROTECTIVE DEVICES WOULD RESULT IN MAJOR DAMAGE TO NET. INCIDENTAL CATCHES OF BOTTOM SPECIES IS NOT RPT NOT GOVERN-ED BY THIS REGULATION BUT BY OTHER REGS DEALING WITH MESH SIZES AND QUOTAS. PROPOSAL WAS OVERTAKEN BY MORE EX-TENSIVE PROPOSAL ADOPTED IN MIAMI. GDR VOTED FOR AT BOTH MTGS.

C. RESOLUTION 1 DEALS WITH THE SUBMISSION OF PROVISIONAL MONTHLY CATCH STATISTICS TO ICNAF SECRETARIAT IN ADDITION TO YEARLY STATISTICS. GDR COMMENT QTE MONTHLY REPORTS ON THE CATCHES ARE PRELIMINARY DATA WHICH ARE SPECIFIED CONFIDENTIAL

IN DETAIL IN THE YEARLY CATCH STATISTICS UNQTE. THIS IS UNDERSTOOD BY ALL AND REASON FOR COMMENT IS UNCLEAR. IT IS ASSUMED THAT PRELIMINARY DATA WILL BE UPDATED AND CORRECTED IN LATER MONTHLY REPORTS SO THAT CLEAR PICTURE OF ACTUAL FISHERIES WILL NOT HAVE TO AWAIT YEARLY STATIS-TICS, WHICH IS AIM OF RESOLUTION. CONVENTION ARTICLE VI, PARA 3, REQUIRES SUBMISSION OF STATISTICS AS REQUIRED BY COMMISSION AND THUS RESOLUTION IS BINDING OBLIGATION. GDR VOTED FOR RESOLUTION.

D. RESOLUTION 2 IS COMMISSION DECISION ON HERRING STOCK LEVELS AND CONSEQUENT QUOTAS IN SA5 AND SA6 FOR 1976 AND WHILE IT CANNOT BIND THE COMMISSION IT ESTABLISHES CLEAR INTENT FOR 1975 ANNUAL MEETING DECISIONS. GDR COMMENT QTE AT THE PRESENT MOMENT RESOLUTION NO. 2 CANNOT BE SECONDED BY THE GDR. A SCIENTIFICALLY BASED ASSESSMENT REQUIRES THE EVALUATION OF THE 1974 CATCH SEASON FOR HERRING WHICH STARTS JUST NOW. UNQTE. AS NOTED IN REF B, MIAMI MTG DECIDED TO REDUCE HERRING QUOTA FOR 5Y IN 1975 AND IT IS CLEAR THAT 1976 HERRING QUOTAS WILL ALSO HAVE TO BE REDUCED FOR BOTH 5Y AND 5Z-6. HERRING STOCKS ARE BADLY DEPLETED ALREADY AND US CANNOT TOLERATE FURTHER

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DEPLETION COASTAL STOCKS. IN FACT THEY MUST BE REBUILT, AND THIS CAN ONLY BE DONE BASICALLY BY REDUCING CATCHES. GDR VOTED FOR RESOLUTION AND MIAMI REDUCTION.

E. ALL REGULATORY PROPOSALS AND RESOLUTIONS ADOPTED UNANIMOUSLY AT 1974 ANNUAL AND MIAMI MTGS.

5. GDR DELEGATION HAS ACTIVELY COOPERATED WITH US DEL AT ALL RECENT ICNAF MTGS. IN FACT, AT TIMES IT HAS TAKEN THE LEAD IN ADVOCATING ADOPTION OF US PROPOSALS AND RECOGNITION OF SPECIAL COASTAL STATE PREFERENCES. BOTH IN MTGS AND IN PRIVATE DISCUSSIONS GDR DEL HAS INDICATED FULL UNDERSTANDING US CONCERNS AND STRONG DESIRE TO COOPERATE. WE ARE NOT AWARE THAT THERE HAVE BEEN SIGNIFICANT VIOLATIONS OF ICNAF REGS BY GDR VESSELS, ALTHOUGH THERE MAY BE A SIGNIFICANT OVERAGE OF THE 1974 HERRING QUOTA IN 5Y ON WHICH WE DO NOT YET HAVE STATISTICS.

6. ICNAF CONVENTION CONTAINS NO PROVISIONS ON RESERVATIONS. CONFIDENTIAL

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THIS BEING THE CASE, WHEN RESERVATIONS (INCLUDING STATEMENTS WHICH APPEAR TO CONSTITUTE RESERVATIONS) ARE MADE SUBSEQUENT TO ADOPTION BY THE COMMISSION OF PROPOSALS, THE DEPOSITARY WOULD NORMALLY PROPOSE TO FOLLOW THE SAME PROVISIONS OF THE CONVENTION AS APPLY WITH RESPECT TO OBJECTIONS. THIS WOULD MEAN THAT PROPOSALS 4, 5, 6 AND 11, DISCUSSED BELOW, WOULD PROBABLY NOT ENTER INTO FORCE UNTIL AT LEAST 60 DAYS BEYOND JANUARY 11, 1975, THE DATE UPON WHICH THEY WOULD ENTER INTO FORCE IN THE ABSENCE OF OBJECTIONS. THERE IS SIMPLY NO TIME TO CONSULT WITH ALL OTHER MEMBERS ON THE RESERVATIONS AND OBTAIN APPROVAL BY JANUARY 11, 1975. WHEN RESERVATIONS ARE PRESENTED AT THE COMMISSION'S MEETING, RATHER THAN SUBSEQUENTLY AS IN THE PRESENT CASE, THE RESERVATIONS BECOME PART OF THE PROCEDURE FOR ACCEPTING PROPOSALS BY WHICH ALL MEMBERS HAVE SIX MONTHS TO CONSIDER THE PROPOSALS, TOGETHER WITH THE RESERVATIONS, AND DECIDE WHETHER OR NOT TO PRESENT OBJECTIONS.

7. SINCE GDR SPECIFICALLY MENTIONS RESERVATION WITH REGARD TO PROPOSAL 11, THIS MUST BE TREATED AS OBJECTION IF NOT WITHDRAWN. IT WOULD APPEAR STATEMENT ON PROPOSALS 4, 5, AND 6 MAY ALSO HAVE TO BE TREATED AS RESERVATIONS AND HENCE OBJECTIONS. THIS WOULD CRIPPLE ICNAF REGULATORY PROGRAM, AND RAISES PROBABILITY US WOULD ALSO HAVE TO OBJECT BECAUSE OF INVOLVEMENT OF US FISHERMEN IN THESE FISHERIES. USG CANNOT ACCEPT US FISHERMEN BEING SUBJECTED TO MORE STRINGENT REGULATIONS THAN FOREIGN FISHERMEN IN US COASTAL FISHERIES. THIS IN TURN COULD LEAD TO OTHER OBJECTIONS. IN ADDITION, USG MAY HAVE TO OBJECT TO ALL REGULATIONS ORIGINATING IN BOTH 1974 ANNUAL AND MIAMI MTGS AS WE HAVE CONSIDERED THESE AS A PACKAGE WHICH IS REQUIRED

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IN ITS ENTIRETY TO MEET VERY BASIC US CONCERNS. SUCH A SITUATION WOULD INTENSIFY ALREADY STRONG PRESSURES FOR

PASSAGE 200 MILE LEGISLATION IN NEW CONGRESS. THIS COULD MEAN PASSAGE PRIOR TO MARCH-MAY SESSION OF LOS CONFERENCE, WITH OUR GOAL BEING TO DELAY ACTION UNTIL AFTER CONFERENCE IN EXPECTATION THAT SUFFICIENT PROGRESS WILL BE MADE AT CONFERENCE SO THERE WILL BE EARLY AGREEMENT AND END THREAT OF UNILATERAL ACTION.

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8. SIX MONTH DEADLINE IS JANUARY 11, 1975.

9. US GENERALLY DISTINGUISHES BETWEEN DEPOSITARY FUNCTIONS CARRIED OUT IN WASHINGTON AND MEMBER FUNCTIONS CARRIED OUT IN CAPITOLS.

10. ACTION: EMBASSY REQUESTED DISCUSS MATTER WITH GDR AUTHORITIES, DRAWING ON ABOVE AS APPROPRIATE, AND URGE PROMPT WITHDRAWAL OF NOTE. KISSINGER

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